

ent 44 Filed 08/17/15 Page 1 of 15 Page ID #:562
NOTE: CHANGES MADE BY THE COURT

**IN THE UNITED STATES DISTRICT COURT FOR
CENTRAL DISTRICT OF CALIFORNIA**

JEFFREY KUNS, an individual, on his own behalf and on behalf of all others similarly situated,

No. 12-CV-7118-DMG (PLAx)

District Judge Dolly M. Gee

Magistrate Judge Paul L. Abrams

STIPULATED PROTECTIVE ORDER

Plaintiffs,

V.

OCWEN LOAN SERVICING, LLC, a Delaware limited liability companies, and DOES 1-100, inclusive,

Defendants.

1 **1. PURPOSES AND LIMITATIONS**

2 Disclosure and discovery activity in this action are likely to involve production of
 3 information for which special protection from public disclosure and from use for any
 4 purpose other than prosecuting this litigation may be warranted. Accordingly, the parties
 5 hereby stipulate to and petition the court to enter the following Stipulated Protective
 6 Order. The parties acknowledge that this Order does not confer blanket protections on all
 7 disclosures or responses to discovery and that the protection it affords from public
 8 disclosure and use extends only to the limited information or items that are entitled to
 9 confidential treatment under the applicable legal principles. The parties further
 10 acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order
 11 does not entitle them to file confidential information under seal; Civil Local Rules 79-5
 12 and Paragraph 12.3 set forth the procedures that must be followed and the standards that
 13 will be applied when a party seeks permission from the court to file material under seal.

14 **1.2 GOOD CAUSE STATEMENT.**

15 As of the date they have submitted this Stipulated Protective Order to the Court,
 16 the parties have identified specific categories of information as requiring protection under
 17 this Stipulated Protective Order. These categories include, but are not limited to:

18 1.2.1. Plaintiff's Credit Reports. Disclosure of Plaintiff's credit reports would
 19 reveal his Social Security number, former and current residential addresses, former and
 20 current creditors and/or debts, and financial account numbers. Plaintiff maintains that
 21 disclosure of this information would unduly impinge on Plaintiff's privacy and would
 22 tend to expose him to a higher risk of identity theft.

23 1.2.2. Other Information Subject to Federal Rule 5.2. Any other information that
 24 contains Kuns's Social Security number, birth date, and/or financial account number.
 25 Plaintiff maintains that disclosure of this information would tend to expose Plaintiff to a
 26 higher risk of identity theft.

27 1.2.3. Medical Records and Related Information. Any information (such as direct
 28 testimony or information that might otherwise be privileged under California Evidence

1 Code sections 1010 to 1038.3 (concerning mental health professionals)) that Plaintiff may
 2 produce in support of his claims of emotional distress. Plaintiff maintains that disclosure
 3 of this information would tend to subject Plaintiff to humiliation and loss of privacy if it
 4 were part of the public record.

5 1.2.4. Tax Records. Disclosure of this information would cause significant harm
 6 to the parties' competitive positions. Plaintiff maintains that disclosure of his tax records
 7 would unduly impinge on Plaintiff's privacy, would tend to expose him to a higher risk of
 8 identity theft, and is contrary to the public policy against unnecessary disclosure of tax
 9 records. *Cf. Premium Service Corp. v. Sperry & Hutchinson Co.*, 511 F.2d 225, 229 (9th
 10 Cir. 1975); *Aliotti v. Vessel SENORA*, 217 F.R.D. 496, 497 (N.D. Cal. 2003).

11 1.2.5. Loan Information. Defendant maintains that it may be prohibited by law,
 12 regulation, or agreement, from disclosing or may be limited in its ability to disclose,
 13 personally identifiable information regarding individual mortgage loans and borrowers.
 14 *E.g.*, 15 U.S.C. §§ 6801, *et seq.*

15 1.2.6. Trade Secrets and Proprietary Information and Materials. Any information
 16 which constitutes or reveals a trade secret or confidential proprietary information,
 17 specifically including financial statements and other nonpublic financial records and
 18 information, proprietary policies and procedures, and third-party contracts. Disclosure of
 19 this information would cause significant harm to the parties' competitive and financial
 20 positions. *See Fed. R. Civ. P. 26(c)(1)(G); Bible v. Rio Properties, Inc.*, 246 F.R.D. 614,
 21 619 (C.D. Cal. 2007)

22 **2. DEFINITIONS**

23 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
 24 information or items under this Order.

25 2.2 "CONFIDENTIAL" Information or Items: information (regardless of how
 26 it is generated, stored or maintained) or tangible things that qualify for protection under
 27 Federal Rule of Civil Procedure 26(c).

28 2.3 Counsel (without qualifier): Outside Counsel of Record and House

1 Counsel (as well as their support staff).

2 2.4 Designating Party: a Party or Non-Party that designates information or
3 items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

4 2.5 Disclosure or Discovery Material: all items or information, regardless of
5 the medium or manner in which it is generated, stored, or maintained (including, among
6 other things, testimony, transcripts, and tangible things), that are produced or generated in
7 disclosures or responses to discovery in this matter.

8 2.6 Expert: a person with specialized knowledge or experience in a matter
9 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
10 expert witness or as a consultant in this action.

11 2.7 House Counsel: attorneys who are employees of a party to this action.
12 House Counsel does not include Outside Counsel of Record or any other outside counsel.

13 2.8 Non-Party: any natural person, partnership, corporation, association, or
14 other legal entity not named as a Party to this action.

15 2.9 Outside Counsel of Record: attorneys who are not employees of a party to
16 this action but are retained to represent or advise a party to this action and have appeared
17 in this action on behalf of that party or are affiliated with a law firm which has appeared
18 on behalf of that party.

19 2.10 Party: any party to this action, including all of its officers, directors,
20 employees, consultants, retained experts, and Outside Counsel of Record (and their
21 support staffs).

22 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
23 Discovery Material in this action.

24 2.12 Professional Vendors: persons or entities that provide litigation support
25 services (e.g., photocopying, videotaping, translating, preparing exhibits or
26 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
27 their employees and subcontractors.

28 2.13 Protected Material: any Disclosure or Discovery Material that is designated

1 as "CONFIDENTIAL."

2 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material
3 from a Producing Party.

4 **3. SCOPE**

5 The protections conferred by this Stipulation and Order cover not only Protected
6 Material (as defined above), but also (1) any information copied or extracted from
7 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
8 Material; and (3) any testimony, conversations, or presentations by Parties or their
9 Counsel that might reveal Protected Material. However, the protections conferred by this
10 Stipulation and Order do not cover the following information: (a) any information that is
11 in the public domain at the time of disclosure to a Receiving Party or becomes part of the
12 public domain after its disclosure to a Receiving Party as a result of publication not
13 involving a violation of this Order, including becoming part of the public record through
14 trial or otherwise; and (b) any information known to the Receiving Party prior to the
15 disclosure or obtained by the Receiving Party after the disclosure from a source who
16 obtained the information lawfully and under no obligation of confidentiality to the
17 Designating Party. Any use of Protected Material at trial shall be governed by a separate
18 agreement or order.

19 **4. DURATION**

20 Even after final disposition of this litigation, the confidentiality obligations
21 imposed by this Order shall remain in effect until a Designating Party agrees otherwise in
22 writing or the confidential material is presented to the Court during trial on this matter, at
23 which point the confidential material presented at trial will become public and will be
24 presumptively available to all members of the public, including the press, unless good
25 cause is shown to the district judge in advance of the confidential material being
26 presented or submitted at trial. Final disposition shall be deemed to be the later of (1)
27 dismissal of all claims and defenses in this action, with or without prejudice; and (2) final
28 judgment herein after the completion and exhaustion of all appeals, rehearings, remands,

1 trials, or reviews of this action, including the time limits for filing any motions or
 2 applications for extension of time pursuant to applicable law.

3 **5. DESIGNATING PROTECTED MATERIAL**

4 **5.1 Exercise of Restraint and Care in Designating Material for Protection.**

5 Each Party or Non-Party that designates information or items for protection under
 6 this Order must take care to limit any such designation to specific material that qualifies
 7 under the appropriate standards. The Designating Party must designate for protection
 8 only those parts of material, documents, items, or oral or written communications that
 9 qualify – so that other portions of the material, documents, items, or communications for
 10 which protection is not warranted are not swept unjustifiably within the ambit of this
 11 Order.

12 Mass, indiscriminate, or routinized designations are prohibited. Designations that
 13 are shown to be clearly unjustified or that have been made for an improper purpose (e.g.,
 14 to unnecessarily encumber or retard the case development process or to impose
 15 unnecessary expenses and burdens on other parties) expose the Designating Party to
 16 sanctions.

17 If it comes to a Designating Party's attention that information or items that it
 18 designated for protection do not qualify for protection, that Designating Party must
 19 promptly notify all other Parties that it is withdrawing the mistaken designation.

20 **5.2 Manner and Timing of Designations.** Except as otherwise provided in this
 21 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
 22 ordered, Disclosure or Discovery Material that qualifies for protection under this Order
 23 must be clearly so designated before the material is disclosed or produced.

24 Designation in conformity with this Order requires:

25 (a) **for information in documentary form** (e.g., paper or electronic documents,
 26 but excluding transcripts of depositions or other pretrial or trial proceedings), that the
 27 Producing Party affix the legend “CONFIDENTIAL” to each page that contains
 28 protected material. If only a portion or portions of the material on a page qualifies for

1 protection, the Producing Party also must clearly identify the protected portion(s) (e.g.,
2 by making appropriate markings in the margins).

3 A Party or Non-Party that makes original documents or materials available for
4 inspection need not designate them for protection until after the inspecting Party has
5 indicated which material it would like copied and produced. During the inspection and
6 before the designation, all of the material made available for inspection shall be deemed
7 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants
8 copied and produced, the Producing Party must determine which documents, or portions
9 thereof, qualify for protection under this Order. Then, before producing the specified
10 documents, the Producing Party must affix the “CONFIDENTIAL” legend to each page
11 that contains Protected Material. If only a portion or portions of the material on a page
12 qualifies for protection, the Producing Party also must clearly identify the protected
13 portion(s) (e.g., by making appropriate markings in the margins).

14 (b) for testimony given in deposition or in other pretrial or trial proceedings,
15 that the Designating Party identify on the record, before the close of the deposition,
16 hearing, or other proceeding, all protected testimony.

17 (c) for information produced in some form other than documentary and for any
18 other tangible items, that the Producing Party affix in a prominent place on the exterior of
19 the container or containers in which the information or item is stored the legend
20 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant
21 protection, the Producing Party, to the extent practicable, shall identify the protected
22 portion(s).

23 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
24 failure to designate qualified information or items does not, standing alone, waive the
25 Designating Party’s right to secure protection under this Order for such material. Upon
26 timely correction of a designation, the Receiving Party must make reasonable efforts to
27 assure that the material is treated in accordance with the provisions of this Order.

28

1 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

2 The parties shall comply with Local Rule 37 concerning any challenge to a
 3 confidential designation under this Order.

4 This Order further specifies that the Designating Party shall be responsible for
 5 preparing the initial draft of the Joint Stipulation required under Local Rule 37-2.2 no
 6 later than ten (10) days after the conference required under Local Rule 37-1 and were
 7 unable to resolve the dispute over the confidentiality designation. The burden of
 8 persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous
 9 challenges, and those made for an improper purpose (e.g., to harass or impose
 10 unnecessary expenses and burdens on other parties) may expose the Challenging Party to
 11 sanctions. Unless the Designating Party has waived the confidentiality designation by
 12 failing to file a motion to retain confidentiality as described above, all parties shall
 13 continue to afford the material in question the level of protection to which it is entitled
 14 under the Producing Party's designation until the court rules on the challenge.

15 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

16 7.1 Basic Principles. A Receiving Party may use Protected Material that is
 17 disclosed or produced by another Party or by a Non-Party in connection with this case
 18 only for prosecuting, defending, or attempting to settle this litigation. Such Protected
 19 Material may be disclosed only to the categories of persons and under the conditions
 20 described in this Order. When the litigation has been terminated, a Receiving Party must
 21 comply with the provisions of section 13 below (FINAL DISPOSITION).

22 Protected Material must be stored and maintained by a Receiving Party at a
 23 location and in a secure manner that ensures that access is limited to the persons
 24 authorized under this Order.

25 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
 26 ordered by the court or permitted in writing by the Designating Party, a Receiving Party
 27 may disclose any information or item designated "CONFIDENTIAL" only to:

28 (a) the Receiving Party's Outside Counsel of Record in this action, as well as

1 employees of said Outside Counsel of Record to whom it is reasonably necessary to
2 disclose the information for this litigation and who have signed the "Acknowledgment
3 and Agreement to Be Bound" that is attached hereto as Exhibit A;

4 (b) the officers, directors, and employees (including House Counsel) of the
5 Receiving Party to whom disclosure is reasonably necessary for this litigation and who
6 have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

7 (c) Experts (as defined in this Order) of the Receiving Party to whom
8 disclosure is reasonably necessary for this litigation and who have signed the
9 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

10 (d) the court and its personnel;

11 (e) court reporters and their staff, professional jury or trial consultants, mock
12 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this
13 litigation and who have signed the "Acknowledgment and Agreement to Be Bound"
14 (Exhibit A);

15 (f) during their depositions, witnesses in the action to whom disclosure is
16 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be
17 Bound" (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the
18 court. Pages of transcribed deposition testimony or exhibits to depositions that reveal
19 Protected Material must be separately bound by the court reporter and may not be
20 disclosed to anyone except as permitted under this Stipulated Protective Order; and

21 (g) the author or recipient of a document containing the information or a
22 custodian or other person who otherwise possessed or knew the information.

23 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**
24 **IN OTHER LITIGATION**

25 If a Party is served with a subpoena or a court order issued in other litigation that
26 compels disclosure of any information or items designated in this action as
27 "CONFIDENTIAL," that Party must:

28 (a) promptly notify in writing the Designating Party. Such notification shall

1 include a copy of the subpoena or court order;

2 (b) promptly notify in writing the party who caused the subpoena or order to
3 issue in the other litigation that some or all of the material covered by the subpoena or
4 order is subject to this Protective Order. Such notification shall include a copy of this
5 Stipulated Protective Order; and

6 (c) cooperate with respect to all reasonable procedures sought to be pursued by
7 the Designating Party whose Protected Material may be affected.

8 If the Designating Party timely seeks a protective order, the Party served with the
9 subpoena or court order shall not produce any information designated in this action as
10 “CONFIDENTIAL” before a determination by the court from which the subpoena or
11 order issued, unless the Party has obtained the Designating Party’s permission. The
12 Designating Party shall bear the burden and expense of seeking protection in that court of
13 its confidential material – and nothing in these provisions should be construed as
14 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive
15 from another court.

16 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
17 **PRODUCED IN THIS LITIGATION**

18 (a) The terms of this Order are applicable to information produced by a Non-
19 Party in this action and designated as “CONFIDENTIAL.” Such information produced by
20 Non-Parties in connection with this litigation is protected by the remedies and relief
21 provided by this Order. Nothing in these provisions should be construed as prohibiting a
22 Non-Party from seeking additional protections.

23 (b) In the event that a Party is required, by a valid discovery request, to
24 produce a Non-Party’s confidential information in its possession, and the Party is subject
25 to an agreement with the Non-Party not to produce the Non-Party’s confidential
26 information, then the Party shall:

27 (1) promptly notify in writing the Requesting Party and the Non-Party
28 that some or all of the information requested is subject to a confidentiality agreement

1 with a Non-Party;

2 (2) promptly provide the Non-Party with a copy of the Stipulated
3 Protective Order in this litigation, the relevant discovery request(s), and a reasonably
4 specific description of the information requested; and

5 (3) make the information requested available for inspection by the Non-
6 Party.

7 (c) Disputes over information produced by Non-Parties in connection with this
8 litigation shall be resolved in conformity with Paragraph 6 and Local Rule 37.

9 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

10 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
11 Protected Material to any person or in any circumstance not authorized under this
12 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing
13 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
14 all unauthorized copies of the Protected Material, (c) inform the person or persons to
15 whom unauthorized disclosures were made of all the terms of this Order, and (d) request
16 such person or persons to execute the "Acknowledgment and Agreement to Be Bound"
17 that is attached hereto as Exhibit A.

18 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
19 PROTECTED MATERIAL**

20 When a Producing Party gives notice to Receiving Parties that certain
21 inadvertently produced material is subject to a claim of privilege or other protection, the
22 obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure
23 26(b)(5)(B). This provision is not intended to modify whatever procedure may be
24 established in an e-discovery order that provides for production without prior privilege
25 review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach
26 an agreement on the effect of disclosure of a communication or information covered by
27 the attorney-client privilege or work product protection, the parties may incorporate their
28 agreement in the stipulated protective order submitted to the court.

1 **12. MISCELLANEOUS**

2 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
3 person to seek its modification by the court in the future. To the extent that any request
4 for such modification is disputed, the dispute must be resolved in a manner that is
5 consistent with Rule 37.

6 12.2 Right to Assert Other Objections. By stipulating to the entry of this
7 Protective Order no Party waives any right it otherwise would have to object to disclosing
8 or producing any information or item on any ground not addressed in this Stipulated
9 Protective Order. Similarly, no Party waives any right to object on any ground to use in
10 evidence of any of the material covered by this Protective Order.

11 12.3 Filing Protected Material. Without written permission from the Designating
12 Party or a Court order, a party may not file in the public record in this action any
13 Protected Material. The Receiving Party seeking to file under seal any Protected Material
14 must comply with L.R. 79-5.1. Filings may be made under seal only pursuant to a court
15 order authorizing the sealing of the specific material at issue. The parties acknowledge
16 that the Court will consider the fact that a document has been designated under this
17 Order, but such designation does not (standing alone) determine whether a document may
18 be filed under seal. The parties must fulfil their obligations consistent with L.R. 79-5.1 to
19 demonstrate that the document sought to be filed under seal is entitled to protection, **and**
20 **good cause for the under seal filing must be shown.**

21 Because a party other than the Designating Party will often be seeking to file
22 Protected Material and the Designating Party may be the only party with competent
23 evidence that supports an application under L.R. 79-5.1, cooperation between the parties
24 in preparing, and in reducing the number and extent of, requests for filing under seal
25 filing is essential. The Receiving Party is responsible for lodging Protected Material with
26 the Court in compliance with L.R. 79-5.1. The Designating Party is responsible for
27 supporting the Receiving Party's request to file the Protected Material under seal
28 pursuant to L.R. 79-5.1 (with any legal argument or evidence that the Designating Party

1 may choose to present) by filing or lodging a response in support of such request no less
2 than five (5) court days after the request is filed. If (after the supporting response has
3 been filed) the Court denies the L.R. 79-5.1 request, the other party may file the Protected
4 Material in the public record (unless otherwise ordered by the Court). Any papers or
5 material attached to a Receiving Party's application under L.R. 79-5.1 shall be deemed
6 timely filed with respect to any substantive deadline that applies to such material when
7 the Receiving Party files its application under L.R. 79-5.1 prior to such deadline.

8 **13. FINAL DISPOSITION**

9 Within 60 days after the final disposition of this action, as defined in paragraph 4,
10 each Receiving Party must return all Protected Material to the Producing Party or destroy
11 such material. As used in this subdivision, "all Protected Material" includes all copies,
12 abstracts, compilations, summaries, and any other format reproducing or capturing any of
13 the Protected Material. Whether the Protected Material is returned or destroyed, the
14 Receiving Party must submit a written certification to the Producing Party (and, if not the
15 same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
16 (by category, where appropriate) all the Protected Material that was returned or destroyed
17 and (2) affirms that the Receiving Party has not retained any copies, abstracts,
18 compilations, summaries or any other format reproducing or capturing any of the
19 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
20 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
21 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
22 work product, and consultant and expert work product, even if such materials contain
23 Protected Material. Any such archival copies that contain or constitute Protected Material

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1 remain subject to this Protective Order as set forth in Section 4 (DURATION).

2 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

3
4 Dated: August 13, 2015 By: s/Ethan Preston
5 David C. Parisi (162248)
6 Suzanne Havens Beckman (188814)
7 PARISI & HAVENS LLP
8 212 Marine Street, Suite 100
9 Santa Monica, California 90405
(818) 990-1299 (telephone)
(818) 501-7852 (facsimile)
dcparisi@parisihavens.com
shavens@parisihavens.com

10
11 Ethan Preston (263295)
12 PRESTON LAW OFFICES
13 4054 McKinney Avenue, Suite 310
14 Dallas, Texas 75204
15 (972) 564-8340 (telephone)
16 (866) 509-1197 (facsimile)
17 ep@eplaw.us

18
19 *Attorneys for Plaintiff Jeffrey Kuns,
20 on his own behalf, and on behalf of all
21 others similarly situated*

22
23 Dated: August 13, 2015 By: s/Danielle N. Oakley (with consent)
24 Elizabeth L. McKeen
25 Danielle N. Oakley
26 Edgar H. Martinez
27 O'Melveny and Myers LLP
28 610 Newport Center Drive Suite 1700
Newport Beach, CA 92660-6429
emckeен@omm.com
doakley@omm.com
emartinez@omm.com

29
30 *Attorneys for Ocwen Loan Servicing, LLC*

31
32 IT IS SO ORDERED:

33
34 DATE: August 17, 2015



35
36 Paul L. Abrams
37 United States Magistrate Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of _____
4 [print or type full address], declare under penalty of perjury that I have read in its entirety
5 and understand the Stipulated Protective Order that was issued by the United States
6 District Court for the Central District of California on [date] in the case of Kuns v.
7 Ocwen Loan Servicing, LLC, No. 12-CV-7118 (DMG) (PLAx). I agree to comply with
8 and to be bound by all the terms of this Stipulated Protective Order and I understand and
9 acknowledge that failure to so comply could expose me to sanctions and punishment in
10 the nature of contempt. I solemnly promise that I will not disclose in any manner any
11 information or item that is subject to this Stipulated Protective Order to any person or
12 entity except in strict compliance with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for
14 the Central District of California for the purpose of enforcing the terms of this Stipulated
15 Protective Order, even if such enforcement proceedings occur after termination of this
16 action.

17 I hereby appoint _____ [print or type full name]
18 of _____ [print or type full address and
19 telephone number] as my California agent for service of process in connection with this
20 action or any proceedings related to enforcement of this Stipulated Protective Order.

21
22 Date: _____
23 City and State where sworn and signed: _____

24 Printed name: _____
[printed name]

25 Signature: _____
[signature]